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ANNEXURE.

[NOTE.—The changes made are sidelined or under lined and the portions omitted are indicated by dots.]

L.A. BILL No. 18 OF 1957.

A Bill to provide for the regulation of conditions of work in catering establishments and for certain other purposes in the State of Madras.

WHEREAS it is expedient to provide for the regulation of conditions of work in catering establishments and for certain other purposes in the State of Madras;

BE it enacted in the Ninth Year of the Republic of India as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Madras Catering Establishments Act, 1958.

(2) It extends to the whole of the State of Madras.

(3) (*a*) It shall come into force on such date as the State Government may, by notification, appoint—

(i) in the City of Madras;

(ii) in all the municipalities constituted under the Madras District Municipalities Act, 1920 (Madras Act V of 1920), and under the Travancore District Municipalities Act, 1116 (Travancore Act XXIII of 1116); and

(iii) in all areas within the jurisdiction of—

(*a*) panchayats classified as Class I Panchayats under clause (*a*) of sub-section (1) of section 5 of the Madras Village Panchayats Act, 1950 (Madras Act X of 1950); and

(*b*) panchayats constituted under the Travancore-Cochin Panchayats Act, 1950 (Travancore-Cochin Act II of 1950).

(*b*) The State Government may, by notification, direct that this Act shall come into force in any other area on such date as may be specified in such notification.

2. *Definitions.*—In this Act, unless the context otherwise requires . . . .

(1) "catering establishment" means a restaurant or residential hotel;

(2) "child" means a person who has not completed fourteen years of age;

(3) "day" means the period of twenty-four hours beginning at midnight:

Provided that in the case of an employee whose hours of work extend beyond midnight, day means the period of twenty-four hours beginning from the time when such employment commences;

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(4) " employee " means a person employed in, and in connexion with, any catering establishment, but does not include a member of the employer's family;

(5) " employer " means a person owning or having charge of the business of a catering establishment and includes the manager, agent or other person acting in the general management or control of a catering establishment;

(6) " family " in relation to an employer means the husband or wife, son, daughter, father, mother, brother or sister of such employer who lives with him and is dependent on him;

(7) " Inspector " means an Inspector appointed under section 20 for the area;

(8) " leave " means leave provided for in section 12;

(9) " period of work " means the time during which an employee is at the disposal of the employer;

(10) " registration certificate " means a certificate showing the registration of a catering establishment;

(11) " residential hotel " means any premises in which the business or providing dwelling accommodation and supply of meals to any member of the public or a class of the public is carried on;

(12) " restaurant " means any premises in which is carried on the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises; . . . .

(13) " spread over " means the period between the commencement and the termination of the work of an employee on any day;

(14) " week " means the period of seven days beginning at midnight on Saturday or on such other day as may be specified for a particular area or for a particular class of catering establishments by the prescribed authority;

(15) " young person " means a person who has completed fourteen years of age but has not completed eighteen years of age.

3. *Exemptions.*—(1) The provisions of this Act except section 21 shall not apply to any catering establishment in which only members of the employer's family are employed.

(2) The provisions of sections 7 to 11 shall not apply to the persons occupying positions of management in catering establishments.

(3) The State Government may, by notification, exempt either permanently or for any specified period, any catering establishment or class of catering establishments or any person or class of persons to which or to whom this Act applies, from all or any of its provisions, subject to such conditions as the State Government deem fit.

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4. *Registration of catering establishments.*—(1) Within the period specified in sub-section (3) every employer shall send to the Inspector a statement in such form together with such fees, as may be prescribed.

(2) On receipt of the statement and the fees, the Inspector shall, on being satisfied about the correctness of the statement, register the catering establishment in such manner as may be prescribed in the register of catering establishment maintained for the purpose and shall issue, in the prescribed form, a registration certificate to the employer. The registration certificate shall be prominently displayed at the catering establishment.

(3) The statement under sub-section (1) shall be sent within thirty days from the date on which this Act comes into force in the case of catering establishment existing on such date, and within thirty days from the date of commencement of work in the case of any new catering establishment.

(4) A registration certificate shall be valid for a financial year and shall be renewed from financial year to financial year on payment of such fees as may be prescribed.

5. *Change to be communicated to Inspector.*—It shall be the duty of an employer to notify to the Inspector, in the prescribed form, any change in respect of any information contained in his statement under section 4 within seven days after the change has taken place. The Inspector shall on receiving such notice and on being satisfied about its correctness, make the change in the register of catering establishments in accordance with such notice and shall amend the registration certificate or issue a fresh registration certificate, if necessary.

6. . . . . *Removal of catering establishments from the register.*—An employer closing a catering establishment shall, within ten days of his doing so, notify to the Inspector in writing of such closure. The Inspector shall, on receiving such notice and on being satisfied about its correctness, remove such catering establishment from the register of catering establishments and cancel the registration certificate.

7. *Daily and weekly hours of work in catering establishments.*—(1) No young person shall be required or allowed to work in any catering establishment for more than nine hours in any day.

(2) No other employee shall be required or allowed to work in any catering establishment for more than nine hours in any day or for more than forty-eight hours in any week:

Provided that, subject to the payment of overtime wages, the total number of hours of work including overtime shall not exceed ten hours in any day and the total number of hours of overtime work shall not exceed fifty hours on any quarter.

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8. *Extra wages for overtime work.*—Where an employee works in any catering establishment for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of such overtime work, be entitled to wages at twice the ordinary rate of wages.

Explanation.—For the purposes of this section, the expression 'ordinary rate of wages' means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include a bonus.

9. *Interval for rest.*—The period of work of an employee each day shall be so fixed that he shall not have to work continuously for more than five hours before he has had an interval for rest of at least half an hour.

10. *Spread over.*—The periods of work of an employee shall be so arranged that along with his intervals for rest they shall not spread over more than fourteen hours in any day:

Provided that the number of intervals for rest for an employee in any day shall not exceed two.

11. *Holidays.*—(1) Every employee shall be allowed in each week a holiday of one whole day.

(2) Every employee shall be allowed in each calendar year a holiday of one whole day on the 26th January and the 15th August and five holidays each of one whole day for such festivals as the Inspector may, in consultation with the employer and the employees, specify in respect of any catering establishment.

(3) (*a*) Notwithstanding any contract to the contrary, no deduction shall be made from the wages of any employee on account of any holiday allowed to him under sub-section (1) or sub-section (2);

(*b*) Every employee shall be paid wages at the ordinary rates of wages as defined in the Explanation to section 8 for each of the holidays allowed to him under sub-section (2).

(4) Where an employee works on any holiday allowed under sub-section (2), he shall, at his option, be entitled to—

(*a*) to wages at twice the ordinary rate of wages as defined in the Explanation to section 8 for such day, or

(*b*) to wages at the ordinary rate of wages defined as aforesaid for such day and to avail himself of a substituted holiday with wages on any other day.

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12. *Leave with wages.*—(1) Every employee who has worked for a period of not less than 240 days in a catering establishment during calendar year shall be allowed in the subsequent calendar year, leave with wages for a number of days calculated—

(i) in the case of an adult, at the rate of one day for every 20 days of work performed by him during the previous calendar year;

(ii) in the case of a young person, at the rate of one day for every 15 days of work performed by him during the previous calendar year.

Explanation 1.—The leave admissible under this sub-section shall be exclusive of all holidays whether occurring during or at the beginning or at the end of the period of leave.

Explanation 2.—For the purpose of this sub-section—

(*a*) any days of lay off, by agreement or contract or as permitted under the Standing Orders of the catering establishment concerned;

(*b*) in the case of a female employee . . . . authorised absence for maternity purposes for any number of days not exceeding twelve weeks; and

(*c*) the leave earned in the year prior to that in which the leave is enjoyed;

shall be deemed to be days on which the employee has worked for the purpose of computation of the period of 240 days but not for earning leave.

(2) An employee whose service commence otherwise than on the first day of January shall be entitled to leave calculated in accordance with sub-section (1), if he has worked for two-thirds of the total number of days in the remainder of the calendar year.

(3) If an employee is discharged or dismissed from service during the course of the year, he shall be entitled to leave with wages at the rate laid down in sub-section (1) even if he has not worked for the entire period specified in sub-section (1) or sub-section (2) entitling him to earn leave.

(4) In calculating leave under this section, any fraction of leave of half a day or more shall be treated as one full day's leave and any fraction of less than half a day shall be omitted.

(5) If an employee does not in any calendar year take the whole of the leave allowed to him under sub-section (1) or sub-section (2), as the case may be, any leave not taken by him shall be added to the leave to be allowed to him in the succeeding calendar year :

Provided that the total number of days of leave that may be carried forward to a succeeding year shall not exceed thirty in the case of an adult or forty in the case of a young person.

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(6) An application by an employee for the whole or any portion of the leave allowed under sub-section (1) or sub-section (2), shall be in writing and ordinarily be made reasonably in advance of the date on which he wishes his leave to begin.

(7) If the employment of an employee who is entitled to leave under sub-section (1) or sub-section (2), as the case may be, is terminated by the employer before he has taken the entire leave to which he is entitled or if having applied for leave he has not been granted such leave, or if the employee quits his employment before he has taken the leave, the employer shall pay him the amount payable under section 13 in respect of the leave not taken and such payment shall be made, where the employment of the employee is terminated by the employer, before the expiry of the second working day after such termination and where the employee quits his employment, on or before the next pay day.

(8) The leave not availed of by an employee shall not be taken into consideration in computing the period of any notice required to be given before discharge or dismissal.

13. *Wages during leave period.*—For the leave allowed to him under section 12 an employee shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he worked during the month immediately preceding his leave, exclusive of any overtime wages and bonus but inclusive of dearness allowance and the cash equivalent of the . . . meals and tiffin supplied to the employee free of charge.

14. *Payment in advance in certain cases.*—An employee who has been granted leave for a period exceeding four days shall, before his leave begins, be paid the wages due for the period of the leave allowed.

15. *Mode of recovery of unpaid wages.*—Any wages required to be paid by an employer but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (Central Act IV of 1936).

16. *Application of the Payment of Wages Act*, 1936, *to catering establishments.*—(1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (Central Act IV of 1936) (hereinafter in this section referred to as the said Act) the State Government may, by notification, direct that, subject to the provisions of sub-section (2), the said Act or any of the provisions thereof or the rules made thereunder shall apply to all or any class of employees in catering establishments to which this Act applies.

(2) On the application of the provisions of the said Act to any catering establishment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

(3) The State Government may, by like notification, cancel or vary any notification issued under sub-section (1).

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17. *Prohibition of employment of children.*—No child shall be required or allowed to work in any catering establishment.

18. *Prohibition of employment of women or young persons during night.*—No woman or young person shall be required or allowed to work whether as an employee or otherwise in any catering establishment between the hours of 9 p.m. and 5 a.m.

19. *Notice of discharge or dismissal.*—(1) No employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice, provided however that such notice shall not be necessary where the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) (*a*) Any employee discharged, dismissed or retrenched may appeal to such authority and within such time and in such manner as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that the employer did not retrench him in good faith.

(*b*) The appellate authority, may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the appellate authority shall, be final and binding on both the parties, not be liable to be questioned in any Court of Law and be given effect to within such time as may be specified in the order of the appellant authority.

20. *Appointment of Inspectors.*—(1) The State Government may by notification, appoint such persons or such class of persons as they think fit to be Inspectors for the purposes of this Act within such local limits as the State Government may specify.

(2) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

21. *Powers and duties of Inspectors.*—Subject to any rules made by the State Government in this behalf, an Inspector may, within the local limits for which he is appointed—

(*a*) enter at all reasonable times and with such assistants if any, who are persons in the service of the Government or of any local authority as he thinks fit to take with him, any place which is, or which he has reason to believe, is a catering establishment;

(*b*) make such examination of the premises and of any prescribed registers, records and notices and take on the spot or elsewherefrom the evidence of such person as he may deem necessary, for carrying out the purposes of this Act; and

(*c*) exercise such other powers as may be necessary for carrying out the purposes of this Act :

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

22. *Employer to produce registers, records, etc., for inspection.*—Every employer shall, on demand, produce for inspection of an Inspector, all registers, records and notices required to be kept under and for the purposes of this Act.

23. *Penalties.*—(1) Any employer who contravenes any of the provisions of sections 4, 5, 6, 7, 9, 10, 11 and 12 or fails to pay wages or compensation in accordance with any order of the appellate authority passed under clause (*b*) of sub-section (2) of section 19 shall, on conviction, be punishable with fine which, for a first offence, may extend to one hundred rupees and, for a second or any subsequent offence shall not be less than one hundred rupees or more than two hundred and fifty rupees.

(2) (*a*) Any employer who fails to reinstate an employee in accordance with any order of the appellate authority passed under clause (*b*) of sub-section (2) of section 19 shall, on conviction, be punishable with fine which may extend to one hundred rupees.

(*b*) Any employer, who after having been convicted under clause (*a*), continues to fail to reinstate an employee in accordance with the order mentioned in that clause shall, on conviction, be punishable for each day after the previous date of conviction, during which he continues so to offend, with fine which may extend to twenty rupees.

(*c*) Any Court trying an offence punishable under this sub-section may direct that the whole or any part of the fine realised from the accused shall be paid by way of compensation to the person who, in its opinion, has been injured by such failure.

(3) Whoever contravenes any other provision of this Act or any of the rules made under this Act shall, on conviction, be punishable with fine which may extend to fifty rupees.

(4) Any compensation required to be paid by an employer under clause (*b*) of sub-section (2) of section 19 but not paid by him shall be recoverable as delayed wages under the provisions of the Payment of Wages Act, 1936 (Central Act IV of 1936).

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24. *Procedure.*—(1) No court shall take cognizance of any offence under this Act or any rule made thereunder except on a complaint made by, or with the previous sanction in writing of, an Inspector.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the Second Class shall try any offence punishable under this Act or any rule made thereunder.

25. *Limitation of prosecution.*—No court shall take cognizance of an offence punishable under this Act or any rule made thereunder unless the complaint is made within six months from the date on which the offence is alleged to have been committed *or* within six months from the date of its coming to the knowledge of the Inspector, whichever is later.

26. *Onus as to age.*—(1) When any question arises under this Act whether any person is under a certain age or not, the burden shall be on the employer concerned to prove that such person, is not under such age.

(2) A declaration by a . . . Government medical officer not below the rank of a Civil Assistant Surgeon that he has personally examined a person employed and believes him to be under the age stated in such declaration shall, for the purposes of this Act and the rules made thereunder, be admissible as evidence of the age of that person.

27. *Saving of certain rights and privileges.*—(1) Nothing contained in this Act shall affect any rights or privileges which an employee in any catering establishment is entitled to on the date this Act comes into force, under any other law, contract, custom or usage applicable to such catering establishment or any award, settlement or agreement binding on the employer and the employee in such catering establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

(2) It any question arises whether the rights or privileges aforesaid are more favourable to an employee than those to which he would be entitled under this Act or whether all or any of the provisions of this Act apply to a catering establishment or to a person employed therein, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and not be liable to be questioned in any Court of Law.

28. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

29. *Power to make rules.*—(1) The State Government may, by notification, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) all matters expressly required or allowed by this Act to be prescribed;

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(*b*) the registers and records to be maintained in a catering establishment for the purposes of examination by Inspectors and of securing compliance with the provisions of this Act;

(*c*) the form of notices to be exhibited in the premises of the catering establishment by the employer and the manner of exhibiting such notices;

(*d*) the manner in which the cash equivalent of the . . . meals and tiffin supplied to employees *free of charge* is to be computed;

(*e*) matters relating to the health of employees in, and the sanitation of, a catering establishment.

(3) The power to make rules conferred by this Act is subject to the conditions of the rules being made after previous publication.

(4) All rules, notifications and orders made under this Act shall, as soon as possible after they are made, be placed on the table of both the Houses of the Legislature and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make within fourteen days on which it actually sits either in the same session or in more than one session.

30. *Certain enactments not to apply to catering establishments.*—On and from the date of the commencement of this Act, the Weekly Holidays Act, 1942 (Central Act XVIII of 1942), the Factories Act, 1948 (Central Act LXIII of 1948), and the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1957), . . . shall not apply to the catering establishments:

Provided that anything done under the said enactments which could have been done under this Act if it had been in force at the relevant times shall be deemed to have been done under this Act.

FORT ST. GEORGE,
MADRAS-9,
28*th January* 1958.

T. HANUMANTHAPPA,
Secretary to the State Legislature.